

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

SCOTT BENJAMIN HALL,

Appellant,

v.

ELIZABETH JOANNE HALL,

Respondent.

**DOCKET NUMBER WD72290
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

Date: March 15, 2011

Appeal from:
Clay County Circuit Court
The Honorable David P. Chamberlain, Judge

Appellate Judges:
Division One: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard and Alok Ahuja, Judges

Attorneys:
Christina E. Gondring, Kansas City, MO, for respondent.
Anita I. Rodarte, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

SCOTT BENJAMIN HALL

Appellant,

v.

ELIZABETH JOANNE HALL,

Respondent.

WD72290

Clay County

Scott Hall ("Father") appeals a Judgment and Decree of Dissolution of Marriage entered by the Circuit Court of Clay County, which dissolved his marriage to Elizabeth Hall ("Mother"). The Judgment awarded Father and Mother joint legal and physical custody of their two children, with Mother's address designated as the children's address for mailing and educational purposes. The Judgment also awarded Mother \$3,000 per month in modifiable maintenance "until further order of the court." Father appeals, and challenges both the trial court's custody determination, and its maintenance award.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Opinion Holds:

Father argues that factual findings contained in the judgment concerning the trial court's child custody determination are deficient in multiple respects: (1) they fail to adequately address the "best interests" factors specified in § 452.375.2, RSMo; (2) they fail to adequately explain the factors animating the trial court to reject the parenting plans proposed by Mother, Father, and the Guardian ad Litem, as required by § 452.375.6, RSMo; (3) they fail to adequately address the evidence of domestic violence Father presented, as required by §§ 452.375.2(6), 452.375.13, and 452.400, RSMo; and (4) they fail to address Mother's mental health, as required by § 452.375.2(6), RSMo.

We agree that the trial court's judgment failed to make the findings required by the cited statutes, and that this omission necessitates reversal where the parties submitted sharply divergent parenting plans, and Father made substantial allegations concerning mother's fitness. The trial court's discussion of the "best interests" factors constitutes little more than a checklist indicating which parent a particular factor favors. Although the trial court rejected each interested party's parenting plan, and adopted its own, it offered no explanation of its reasons for rejecting the parties' parenting plans. Despite substantial evidence from Father that Mother had

engaged in domestic violence directed toward him and the couple's older child, the trial court made no finding as to whether domestic violence had in fact occurred. Finally, the trial court failed to explicitly discuss Mother's mental health, despite competing evidence as to whether she suffered from a personality disorder which could materially affect her ability to serve as the children's custodian.

Given the trial court's failure to make statutorily required findings, we are unable to meaningfully review the merits of the trial court's custody decision. A remand for entry of the required findings is necessary.

Father also challenges the trial court's award of \$3,000 per month in modifiable maintenance to Mother. Father's principal challenge to the maintenance award is that it fails to make necessary factual findings. However, Father failed to make a pre-trial request for such findings pursuant to Rule 73.01(c), and that issue is accordingly not preserved. While Father challenges the income the trial court imputed to him, and its failure to impute income to Mother, substantial evidence supports the trial court's decisions on both issues. Father fails to explain how income from the marital property awarded to Mother should have impacted the maintenance award, and therefore this consideration cannot justify reversal. Finally, the trial court did not err in entering a maintenance award of unlimited duration, given Mother's uncertainty as to when she would be capable of earning any meaningful income. Maintenance awards of unlimited duration are preferred; an award of limited duration is only justified where there is substantial evidence of an impending change in the parties' financial condition. There was no such evidence here.

Before: Division One: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard and Alok Ahuja, Judges

Opinion by: Alok Ahuja, Judge

March 15, 2011

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.
--